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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Application dated 8th October 2007

In

Criminal Appeal No.748 of 1982

Farooq Mirza Hussein Ravi

Applicant

Vs.

State of Maharashtra

Respondent

Through jail.

Mr.P.A.Pol, PP for State.

CORAM: B.H.MARLAPALLE & SMT.ROSHAN S. DALVI,JJ.

October 16, 2009.

P.C.

1. Shri Farooq Mirza Hussein Ravi appellant no.2 and accused no.3 had submitted an application dated 8/10/2007 through the Superintendent, Yerwada Central Prison at Pune praying for the benefit of Section 427(1) of Cr.P.C. Said prayer was reiterated by his subsequent applications dated 29/2/2008 and 27/3/2008.

2. Criminal Appeal Nos.739 and 748 of 1982 came to be decided by a common judgment dated 1st August, 1984 by a Division Bench of this Court and the sentence awarded to

accused no.3 - Farooq Mirza Hussein Miya Ravi (accused no.1 in Sessions Case No.508 of 1980) was directed to run concurrently with the sentence awarded to him in Sessions Case No.509 of 1980. It is apparent that in Sessions Case No.508 of 1980 the applicant was arraigned as accused no.1 and in Sessions Case No.509 of 1980 he was arraigned as accused no.3. From the order of conviction and sentence passed in Sessions Case No. 509 of 1980, these appeals came to be filed and while the appeals were allowed in respect of accused nos.1 and 4 partly, the order of conviction and sentence against applicant-accused was confirmed. From the report received by Mr.Pol from the Yerwada Central Prison at Pune it is clear that no appeal was filed from the order of conviction and sentence passed in Sessions Case No.508 of 1980. In the said case he was sentenced for the offence punishable under Section 392 of IPC on 31/8/1983 and sentenced to suffer RI for seven years. In Sessions Case No.509 of 1980 he was convicted for the very same offence and sentenced for the same period of seven years as per the order dated 18/9/1982 and, therefore, the sentence awarded to him in Sessions Case No.508 of 1980 was to run concurrently with the sentence awarded and confirmed by this Court in Sessions Case No.509 of 1980 and in the

judgment and order dated 1/8/1984 referred to hereinabove this Court had extended the said benefit to the applicant. Despite this it appears that Criminal Writ Petition No. 3605 of 1984 came to be filed before this Court which was decided on 7/8/1984 and it was directed that the sentence awarded in Sessions Case No.508 of 1980 and Sessions Case No.1980 was to be concurrent and not consecutive. The applicant had surrendered to the jail to undergo sentence on 8/10/1983. On 28/4/1984 he was released on parole of 30 days and he absconded for almost twenty years i.e. till he was arrested on 4/4/2004. For the same he was punished and after his re-arrest on 4/4/2004 he was also given the benefit of set off within the meaning of Section 428 of Cr.P.C. and on suffering the sentence he has been released on 12/8/2008 by taking into consideration the orders passed on 1/8/1984 as well as on 7/8/1984 by this Court for the benefit under Section 427(1) of Cr.P.C.

3. Hence this application does not survive any further and the same is dismissed as infructuous.

(SMT.ROSHAN S. DALVI,J.)

(B.H.MARLAPALLE,J.)